

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**



A Public Roundtable
on the
District's Opportunity to Purchase Act

Testimony of
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Director

At a Committee on Housing and Executive Administration Roundtable

The Honorable Anita Bonds, Chairperson

Via Zoom
Wednesday, April 21, 2021
10:00 AM



Good morning, Chairperson Bonds and members of the Committee on Housing and Executive Administration. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD). I am pleased to appear before you on behalf of the Bowser Administration to discuss the District's Opportunity to Purchase Act (DOPA) and our efforts to implement and reform this important affordable housing tool.

DOPA uses the opportunity created by the sale of a multifamily rental property to preserve or create affordable housing if the tenants choose not to exercise their own opportunity to purchase under the Tenant Opportunity to Purchase Act (TOPA) or are otherwise unable to bring their effort to fruition.

The top priority for DOPA is to preserve existing affordable housing in the District. The second priority is to increase the number of covenant-protected affordable homes. The third priority is to create mixed-income communities. While these priorities were clear in the original bill, the last few years of attempting to utilize DOPA have taught us that the statute's language can work at cross purposes and should be clarified to achieve the law's objectives.

Since the program was fully implemented in November 2018, DHCD has received 87 DOPA notices and to-date DHCD has sent 15 DOPA written statements of interest to DOPA eligible properties and has published requests for proposals in all of these cases.¹ In 11 of these cases, there was not DOPA purchase because the tenants pursued their TOPA rights. In the remaining 4 cases, however, there were no responses to the DOPA requests for proposals. DHCD has investigated if there were any changes it could make to the DOPA program to make more effective, to either be more successful in purchasing the

¹ For information on the criteria DHCD considers when evaluating interest in properties, please see "Selection Criteria for Prioritizing Building(s) for district opportunity to purchase act (DOPA) Purchase and Assignment of Rights" (https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/service_content/attachments/DOPA%20Selection%20Criteria.pdf , retrieved April 19, 2021).

currently eligible properties that do not complete a TOPA transfer or to expand the program to additional properties.

Last Council Period, a bill was introduced on behalf of the mayor, Bill 23-136, the “District’s Opportunity to Purchase Amendment Act of 2019,” to address some of the concerns and make DOPA more effective. Your committee staff have since worked with us and advocates and the affordable housing development community to integrate further improvements to the bill, including some from DHCD added as we continue to learn from our implementation of the program. We therefore want to thank you for introducing Bill 24-0168, the “District’s Opportunity to Purchase Amendment Act of 2021” to better clarify how these priorities are to be implemented and further improve the chances that affordable rental homes will be created as DOPA properties. I am confident that the clarifications in this version of the bill will greatly improve the DOPA program and see it better achieve its goals of increasing the number affordable homes and preserving and creating vibrant mixed-income communities.

The bill you have introduced along with your colleagues Councilmembers Robert White and Elissa Silverman make the following improvements:

- 1) It matches the DOPA eligibility requirements with a wider range of available District affordable housing financing tools and projects.
- 2) It untangles and clarifies the statute’s requirements for how rents are to be set and current tenants protected when a DOPA transfer occurs.
- 3) It clarifies the treatment of vacant units in the property.
- 4) It requires a successful developer to submit an affordability plan to the District to guide the transition and ongoing operation of the property to ensure existing affordable housing is preserved and

additional affordable housing is provided as a result of the DOPA transfer limiting rents and incomes at the property to an average 60% of median family income (MFI) or less.

I would like to expand on each of these briefly.

The current DOPA law delineates income and rent criteria for the *initial eligibility* of a property that are distinct and different from what is required of the property as it becomes a DOPA property. Initial eligibility is limited to properties where at least a quarter of the units are currently affordable to a household with an annual income at 50% of the area median family income (MFI). After the acquisition by the District's assignee, however, the law encourages rent and income restricted units to be affordable at 60% of MFI. These different limits are problematic because one of the largest programs providing current and future affordable housing in the District, the federal Low Income Housing Tax Credit (LIHTC) program, primarily limits units to affordability at the 60% MFI level. Thus, under current law, a DOPA property could be refinanced with LIHTC *after* its acquisition by the Mayor or her designee, but a current LIHTC property with 100% of units affordable at 60% MFI is not eligible to be acquired through the DOPA program. More broadly, any property that is well suited to providing significant affordable housing but has rents outside the strict current standard would be out of scope for DOPA. As we try to increase affordable housing across all eight wards this current restriction removes an important tool from our toolbox.

Under the proposed legislation, all properties covered by TOPA will now be covered by DOPA. Along with increasing the opportunities for the Mayor to create affordable housing for District residents, this change also simplifies the process of determining what is required to comply with DOPA for all parties, including owners, brokers, and title companies.

Second, this bill more clearly defines the process of establishing affordability levels and how a property will transition to meeting DOPA's affordable housing goals after the DOPA purchase. Current

law can be unclear how rents are to be set and adjusted after the property is purchased under DOPA and the requirement to meet very specific limitations on rents and the somewhat arbitrary mix of housing affordability required at various levels have proven impractical. Our discussions with pre-qualified DOPA developers who have received DOPA requests for proposals and have chosen not to bid suggests this uncertainty can limit their interest in taking on a DOPA property. The bill you have introduced provides a clear set of requirements to maintain existing affordable rents and protections for current residents, in line with the original statute's priorities, but in a framework that provides greater flexibility for the DOPA purchaser to accommodate pre-purchase uncertainty and leverage funding to transition the property to the DOPA requirements in a practical way.

Third, the bill provides specific direction to DHCD on the treatment of vacant units in the initial eligibility determination for DOPA and greater clarity on their treatment in the transition of a property and its operation as a DOPA property. Upon considering the DOPA notices we have received since implementing the program, it has become clear that the treatment of vacant units, both in determining initial eligibility and in the subsequent determination of the affordability and financial viability of DOPA properties, needs more explicit guidelines. Furthermore, the current statute only directly addresses vacancies that occur after the DOPA acquisition not those that pre-exist or occur during the TOPA/DOPA negotiation period.

Finally, the bill requires a detailed affordability plan that provides for the transition of the property to compliance with the DOPA statute. This plan is then the basis for the acquisition and establishing the affordable housing covenant that will guide the project and maintain its affordability throughout its lifetime. Going forward, this plan will complement the covenant and provide the necessary context and detail for owners, tenants, and the District to refer to in guiding the property through its life that cannot easily be reflected in a legal instrument such as the covenant.

Thus, the bill that you and your colleagues have introduced both removes a number of frictions in the current statute that have been identified to limit developer interest in the properties that the Mayor has offered for DOPA acquisition and it expands the properties eligible to be purchased by the program. This should increase the likelihood of DOPA success, contributing to the Mayor's goal of 12,000 net new affordable units equitable distributed across the District. At the same time, it clarifies the protections for current and future tenants of these properties, requiring that a road map be established to ensure the preservation of these units throughout the life of the building.

Thank you again for your efforts to improve this important program. I look forward to the discussion today and am available to answer any questions you may have.